

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

JOE TAYLOR,

Plaintiff,

v.

**TYSON FOODS, INC. and
TYSON FARMS, INC.,**

Defendants.

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CASE NO. 9:13-cv-245

JURY TRIAL REQUESTED

DEFENDANTS' NOTICE OF REMOVAL

Defendants Tyson Foods, Inc. and Tyson Farms, Inc., (“Defendants”) hereby give notice of the removal of this action from the 123rd/273rd Judicial District Court for Shelby County to the United States District Court for the Eastern District of Texas, Lufkin Division, pursuant to 28 U.S.C. §§ 1441 and 1446, and in support thereof states as follows:

1. Plaintiff Joe Taylor (“Plaintiff”) filed this lawsuit on August 15, 2013, in the 123rd/273rd Judicial District Court for Shelby County, Texas, Case No. 13-CV-32,488. Defendants were formally served with Plaintiff’s Original Petition by agreement on September 4, 2013. Accordingly, this Notice of Removal is timely filed within 30 days of service of the Original Petition.

2. The Court has jurisdiction over the issues presented in the Original Petition pursuant to 28 U.S.C. §§ 1332 and 1441(a)-(b). At the time Plaintiff filed his Original Petition and at the time Defendants filed this Notice of Removal, the parties were and are citizens of different states and were not and are not citizens of the same state. Plaintiff is currently and was at the time he filed the Petition a citizen of the State of Texas. Defendant Tyson Foods, Inc. is currently and was at the time Plaintiff filed the Original Petition a corporation, incorporated in

the State of Delaware, with its principle place of business in the State of Arkansas. Defendant Tyson Farms, Inc. is currently and was at the time Plaintiff filed the Original Petition a corporation, incorporated in the state of North Carolina, with its principle place of business in the State of Arkansas. Thus, complete diversity exists between the parties.

3. This lawsuit is a civil action in which the amount in controversy is likely to exceed the sum or value of \$75,000.00, exclusive of interest and costs. Plaintiff's Petition does not allege the amount of damages sought. However, there exists a reasonable probability that the amount in controversy exceeds \$75,000.00. In the Civil Case Information Sheet, filed with Plaintiff's Original Petition, Plaintiff's counsel indicated the damages sought were "over \$200,000, but not more than \$1,000,000." *See* Exhibit "A-1" attached hereto. Moreover, Plaintiff's counsel was unwilling to enter into a stipulation that Plaintiff is seeking less than \$75,000.00 in this lawsuit. Plaintiff alleges Defendant terminated his employment in 2012 because of his age. *See* Exhibit A-2, Plaintiff's Original Petition at ¶¶ 7.2-7.3. Plaintiff seeks damages for back pay, front pay, liquidated damages, compensatory damages, exemplary damages, and attorneys' fees and costs. *See id.* at ¶ 12. The damages Plaintiff seeks to recover cannot be precisely ascertained from his pleading, but by a preponderance of evidence discernible from Plaintiff's Petition there exists a reasonable probability that Plaintiff's damages, if proven, will exceed \$75,000.00. Furthermore, Plaintiff's counsel, on September 17, 2013 stated he would not oppose removal.

4. Venue is proper in this district under 28 U.S.C. § 1441(a) because the lawsuit was brought and is pending in a place embraced by the district and division of this Court.

5. Pursuant to 28 U.S.C. § 11446(d), Defendants will promptly give written notice of the removal of this action to Plaintiff and will file notice of this removal with the state court. Attached as Exhibit B is a true and correct copy of the Notice of Filing Notice of Removal, which has been served with this document on Plaintiff and filed with the 123rd/273rd Judicial District Court for Shelby County, Texas.

6. A list of all parties in the case, their type, and the status of the case in state court is attached as Exhibit C.

7. Pursuant to Local Rule CV81(c)(2), attached as Exhibits A-1 to A-6 is a true and correct copy of all process, pleadings, orders, and other papers filed in the state case.

8. Pursuant to Local Rule CV81(c)(1), Defendants state there are no matters pending in the state court at the time of this removal.

9. Pursuant to Local Rule 81(c)(3), the following attorneys have appeared in this case in state court:

Todd Slobin, Esq.
Ricardo J. Prieto, Esq.
Attorneys for Plaintiff

SHELLIST | LAZARZ | SLOBIN LLP
11 Greenway Plaza, Suite 1515
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Dan C. Dargene
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Attorneys for Defendants

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10. Plaintiff requested a jury trial in his Original Petition filed in state court.

11. The name and address of the court from which this matter is being removed is 123rd/273rd District Court, Shelby County, Texas; 200 San Augustine Street, Suite 3, Center, Texas 75935.

12. Pursuant to Federal Rule of Civil Procedure 11, the undersigned certify that they have read the notice, that to the best of their knowledge, information, and belief formed after reasonable inquiry, the removal of the action accomplished by this Removal Notice is warranted by existing law, and that this Removal Notice is not interposed for any improper purpose.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Dan C. Dargene

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ATTORNEYS FOR DEFENDANTS

TYSON FOODS, INC. and TYSON FARMS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon counsel for Plaintiff, Todd Slobin, Esq. and Ricardo J. Prieto, Esq., SHELLIST | LAZARZ | SLOBIN LLP, 11 Greenway Plaza, Suite 1515, Houston, Texas 77046, via certified mail, return receipt requested, on this 24th day of September, 2013.

/s/ Dan C. Dargene

DAN C. DARGENE

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